

Statement of

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**Before the
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Committee on the Judiciary
United States House of Representatives**

**Oversight Hearing
Patent Trolls: Fact or Fiction**

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Mr. Chairman, Members of the Committee, thank you for the opportunity to be here today at this important hearing. I am Dean Kamen, President of DEKA Research & Development Corp., a technology development company based in Manchester, New Hampshire that I founded in 1982. As a holder of more than 100 U.S. patents, I am pleased to speak to you today regarding an inventor's perspective on the question of patent trolls.

In the increasingly complex debate over patent reform, the appealingly simple concept of a patent troll has taken on a life of its own. In fact, patent trolls, we are told, are the cause of all of the perceived ills of the patent system. In the past 18 months, the term patent troll has been applied to a progressively broader range of parties and activities, including:

- those who don't manufacture products embodying their patent
- those who offer a license as an alternative to suing for patent infringement
- those who sue alleged infringers that have products already on the market
- small entities who sue large entities with deeper pockets
- those who don't "use" their patent

Not only are these activities typically legitimate and constructive, they, in fact, represent part of the intended purpose of the U.S. patent system. Further, while there do seem to be certain bad actors who inappropriately assert questionable patents, there are also bad actors who deliberately infringe the legitimate patent rights of others. In trying to prevent the bad acts of a few so-called patent trolls, we must be careful not to destroy the patent system that has been the driving force behind the innovation that has made the United States an unrivaled global leader over the past two centuries.

The Patent System Must Foster Innovation

The U.S. patent system was created to inspire innovation. Article 1, Section 8, Clause 8 of the Constitution, specifies that the patent system is to "promote the progress of ...the useful arts by securing to ...inventors for limited times the exclusive rights to their ...discoveries." As President Abraham Lincoln stated, our patent system "adds the fuel of interest to the fire of genius." To work correctly, the patent system must appropriately reward innovation and risk.

In exchange for providing the technical knowledge contained in their patent disclosure to the public, the Constitution grants inventors the right to exclude others from using their inventions for a limited period of time. This exclusive right is essential to encouraging investment in research and development.

DEKA Research & Development is a small company built on a strong intellectual property system. DEKA doesn't manufacture any products in volume; rather, DEKA makes the first prototype of a wide range of new products, primarily in the medical field. DEKA's approximately 200 scientists, engineers, and technicians create innovative technology, and then we partner with established corporations to manufacture, market, and sell these products. This business model is truly a win, win, win that fulfills the

fundamental purpose of the patent system. It is a win for DEKA, because we get to focus on what we do best—solving difficult problems in innovative ways—without the need for a large infrastructure. It is a win for the established corporations, who can do what they do best—leverage their financial resources, existing market presence, and distribution capabilities to get these products to market. Finally, it is a win for the public, because these often life-saving products get to the people who need them in the most efficient, expeditious, and economical way.

Because DEKA licenses our patents to established corporations with the appropriate resources rather than manufacture products ourselves, some would call DEKA a patent troll and seek to limit our right to stop ongoing infringement. In fact, we must be able to credibly defend our patents from infringement by others to make our business model work. The ability to enforce our patent rights is essential for DEKA to be able to attract and secure exclusive partners who invest in the development, marketing and sale of the products that result from our inventions. If the desire to defend our patents against infringers, including those infringers who may be larger entities, defines a patent troll, then DEKA is a troll.

Enforcing Patents – Caution Regarding Reform Proposals

I believe that maintaining strong patent protection for America's inventors is critical. I fear that some of the patent reform measures currently under discussion are not only unnecessary to address the issues that exist in our patent system today, but have the very real potential to create substantially worse problems.

One of the areas of consideration for patent law reform that gives me particular concern is the weakening of the right to injunctive relief once a patent has been found to be both valid and infringed. I believe that weakening the right to a permanent injunction would have catastrophic consequences in our patent system and is particularly problematic for independent inventors.

- It is a fundamental principle of United States patent law to recognize patents as forms of property (like physical property). That is, the holder of a valid patent has a right to exclude others from trespassing on that owner's private property.
- The Constitutional right to exclude others is properly enforced by using the mechanism of a permanent injunction. It is important to note that a permanent injunction can only be granted after two significant and independent events: (1) a patent has been granted by the U.S. Patent and Trademark Office and (2) that patent has subsequently been found to be both valid and infringed by a federal court.
- An infringing party will be less likely to settle a dispute if money is the only risk or penalty that they would face for trampling on the valuable property rights of others. Weakening the right to a permanent injunction, therefore, may discourage parties from resolving their disputes, thus further increasing the volume of patent litigation over-burdening the court system and increasing the associated delays and costs of such litigation.

- Weakening the standard for granting permanent injunctions would be tantamount to adopting compulsory licensing. The United States has fought hard to eliminate these types of compulsory licensing schemes in the international arena through the TRIPS agreement.

Equally problematic is a proposal to require a patent owner to personally manufacture and sell products covered by his or her patent before being entitled to an injunction. The Supreme Court recently rejected this notion in its eBay v. Mercexchange decision. Specifically, in eBay, the court recognized that “some patent holders, such as university researchers or self-made inventors, might reasonably prefer to license their patents, rather than undertake efforts to secure the financing necessary to bring their works to market themselves.” Imposing a use requirement would virtually eliminate the individual inventor’s incentive to invent.

Improving the Quality of Patents

Rather than dwell on the definition of the hypothetical patent troll, I suggest that it may be more productive to find ways to improve the quality of patents. Indeed, ensuring high quality patents would greatly help to prevent abuses of the patent system by anyone, including the elusive patent troll, as well as those bad actors who deliberately infringe upon the legitimate patent rights of others. It is beyond question that a strong patent system, at its core, must ensure that the U.S. Patent and Trademark Office issues patents of the highest possible quality. To accomplish this, patent applications must be examined effectively by highly qualified examiners using the best available technology and prior art. Any patent reform must fundamentally focus on ensuring patent quality prior to the issuance of the patent.

It is my understanding that one reason this examination process is in need of improvement is because funding for the U.S. Patent and Trademark Office has not kept up with the increased number of patent applications being filed. With the proper funding, I am confident that the U.S. Patent and Trademark Office could find ways to hire, train, retain and reward examiners with the requisite credentials to solve the quality problem at its roots. With state of the art search tools and access to the world’s technical literature at their fingertips, along with proper training, supervision and adequate time to do a quality job, many of the real and perceived problems with the patent system should fade away.

Conclusion

As innovation becomes ever more important to America’s global competitiveness, a strong patent system is more important than ever. I strongly urge you to be extremely hesitant to move any legislation that could undermine an enduring component of the economic system that has made America the envy of the world for more than two centuries.

Biography of Dean Kamen

Dean Kamen is an inventor, an entrepreneur and a tireless advocate for science and technology. His roles as inventor and advocate are intertwined -- his own passion for technology and its practical uses has driven his personal determination to spread the word about technology's virtues and by so doing to change the culture of the United States. His vast knowledge of the physical sciences, combined with his ability to integrate the fundamental laws of physics with the most modern technologies, has led to the development of breakthrough processes and products.

As an inventor, he holds more than 150 U.S. and foreign patents, many of them for innovative medical devices that have expanded the frontiers of health care worldwide. While still a college undergraduate, he invented the first wearable infusion pump, which rapidly gained acceptance from such diverse medical specialties as oncology, neonatology and endocrinology. In 1976, Dean founded AutoSyringe, Inc. to manufacture and market these pumps, then continued to develop a number of other infusion device, including the first wearable insulin pump for diabetics. At age 30, Dean sold Autosyringe Inc. to Baxter Healthcare Corp. and founded DEKA Research & Development Corporation. At DEKA, a team of almost 200 people, many of them scientists and engineers, develop internally generated projects, as well as provide research and development for major corporate clients. Some of DEKA's projects have included the HomeChoice™ dialysis machine, developed for Baxter (Design News' 1993 Medical Product of the Year), and the INDEPENDENCE™ IBOT™ Mobility System, developed for Johnson & Johnson. DEKA also invented the Segway® Human Transporter.

A decade ago Dean founded FIRST (For Inspiration and Recognition of Science and Technology), and ever since has remained its driving force. The goal of FIRST is to motivate the next generation of young people to want to learn about science and technology. Many leaders of American industry, education and government help to support FIRST in this crusade. Currently, the FIRST Robotics Competition and the FIRST Lego League impact over 70,000 young people annually. Please see www.usfirst.org for more information on FIRST. Dean has received significant public recognition for his crusade on behalf of science and engineering. He was, for example, labeled by *Smithsonian Magazine* "the Pied Piper of Technology" and profiled by the *New York Times* as "A New Kind of Hero for American Youth".

Dean has also been honored to receive a number of awards for his work, including the Kilby Award; the Heinz Award in Technology, the Economy and Employment; and the National Medal of Technology. Dean has been elected as a member of the National Academy of Engineering of the National Academies and serves as the inventor representative to the Public Patent Advisory Committee (PPAC) of the U.S. Patent and Trademark Office. In May 2005, Dean was inducted into the National Inventors Hall of Fame.